IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.213 OF 2007

Abhijit Jayant Pingle
Aged 31 Years,
an Indian Inhabitant,
residing at 33-B Hill Road,
Opp.Globus Zeba Apartment,
5th Floor, Bandra (W),
Mumbai 400 050. .. Petitioner

V/s

1. The State of Maharashtra
   Through the Secretary to the
   Govt.of Maharashtra, Home
   Department, Mantralaya,
   Mumbai 400 032.

2. Neela Satyanarayana
   Principal Secretary
   (Appeals & Security)
   Govt. of Maharashtra
   Home Department and Detaining
   Authority, Mantralaya,
   Mumbai 400 032.

3. The Superintendent of Prison,
   The Mumbai Central Prison,
   Arthur Road, Mumbai

4. The Superintendent of Prison,
   Nashik Road Central Prison, Nashik .. Respondents

Mr.Maqsood Khan for the Petitioner.
Mr.D.S.Mhaispurkar, APP for Respondents.

CORAM : DR.S.RADHAKRISHNAN, &
SMT.R.S.DALVI, JJ.

DATE : 1st October, 2007.

JUDGMENT: (Per Dr.S.Radhakrishnan, J.)

1. By this petition, the petitioner is challenging the order of detention dated 21st April, 2005 issued by the Principal Secretary (Appeals & Security) to the Government of Maharashtra, Home Department and Detaining

Authority, Mantralaya, Mumbai, against the detenu - Sameer Chandrakant Pingle under Section 3(1) of the COFEPOSA Act, and seeks release from detention.

2. The brief facts are that on 26.09.2004 the officers of the Air Intelligence Unit, Sahara Airport, Mumbai, intercepted the detenu Sameer Chandrakant Pingle who was proceeding towards the Transit Lounge to board flight No.SQ 411 to Singapore. The officers after intercepting the detenu, interrogated him and recovered foreign currency equivalent to Indian Rs.10,78,562/- and the indian currency of Rs.14,500/-. According to the Customs Authorities, the foreign currency was concealed in the bottom pocket of his half pant. On very next day viz.27.09.2004 the statement of the detenu was recorded wherein he had stated that the foreign currency was purchased by him from one Shri.Vipul who used to visit detenu's shop in Mumbai, and the detenu had further stated that he was carrying the amount to settle his credit with the shop owners in Singapore from whom he had earlier purchased goods like LCD Projectors, Digital Cameras etc. Thereafter the detenu was produced before the holiday Court on 27.9.2004 and was remanded to the police custody. He was then produced before the regular Court on 28.9.2004 and was remanded to jail custoday till 8.10.2004 on which day he was granted bail and on the same day he had availed the same. Thereafter, on 21.3.2005 a show cause notice was issued to the detenu

under Section 124 of the Customs Act, and thereafter on 21.4.2005 the Detaining Authority had issued Detention Order under Section 3(1) of the COFEPOSA Act against the detenu, though they were aware that the detenu was involved in the above incident and that he was also granted bail. The said detention order was finally served on the detenu on 18.01.2007 when he was in a judicial custody in some other case.

3. Mr.Maqsood Khan, the learned Counsel for the detenu aurgued only one ground though various grounds are raised in the petition. The only ground raised by the learned Counsel for the detenu is set out as ground No.(x), which reads as under:

> (x) "The Petitioner says and submits that the detenu is submitting the Representation to the Detaining Authority and the State Government, thorugh the Prison authorities and on Rule-Nisa being issued by this Honourable Court, it shall be incumbent on the part of the above two authorities to satisfy this Honourable Court that the Representations made by the Detenu were considered by them strictly in accordance with law and most expeditiously. The Petitioner says and submits that in the event of the failure on the part of the above authorities to so satisfy this Honourable Court, the continued detention of the Detenu be held to be illegal, null and void."

4. It is the contention of the learned Counsel for the detenu that the representation made by the detenu ought to have been considered expeditiously by the Detaining Authority, which has not been done in the instant case, as such he prayed for the release of the detenu. The

learned Counsel Mr.Maqsood Khan has pointed out that the detenu had made a detailed representation against the detention by his representation dated 5.2.2007 to the Detaining Authority. However, he pointed out that the said representation was very belatedly considered and decided by the concerned Authority and the detenu was issued with the rejection letter dated 29.3.2007 which was received by the detenu oon 2.4.2007.

5. Mr.Maqsood Khan has brought to our notice the affidvit in reply filed by the Principal Secretary (Appeals & Security) Home Department, Government of Maharashtra, Mantralaya, Mumbai, dated 27.6.2006 dealing with this aspect of the matter in paragraph No.3, which reads as under:-

> "With reference to paragraph 4(x) of the petition, I state that in respect of the representation dated 5.2.2007, which was received on 8.2.2007 the parawise remarks were called for from the Sponsoring Authority vide letter dated 9.2.2007. Thereafter letterd dated 23.2.2007 & 6.3.2007 were issued as reminder to S.A. for parawise remarks. The S.A. vide letter dated 8.3.2007 forwarded the parawise comments and also informed the office of the Detaining Authority that they have not received the letter dated 9.2.2007 asking for their parawise comments. The remarks of the S.A. were received in the department on 8.3.2007. I say that the concerned Assistant was busy in attending Public Prosecutor Office for preparing affidavits in other COFEPOSA cases as well as attending Court matters in the Hon'ble High Court for hearing of COFEPOSA detenues. Thereafter the concerned Assistant prepared the detailed note on 16.3.07 and forwarded it to the Under Secretary. I state that during the said period there were holidays on 10.3.07 & 11.3.07. The Under Secretary endorsed on it on 17.3.07 & forwarded it to the Deputy Secretary who gave his endorsement on 20.3.07. I

state that during the said period there were holidays on 18.3.07 & 19.3.07. Thereafter the Deputy Secretary forwarded the papers to me and I after carefully going through the same rejected the representation on 26.3.07. I state that during the said period there were holidays on 24.3.07 & 25.3.07. Thereafter the file was forwarded to the Desk which was received on 28.3.2007. There was holiday on 27.3.2007. Thereafter the concerned Assistant prepared the draft of rejection reply on 28.3.2007 and forwarded the same to the Under Secretary for his approval. The Under Secretary gave his endorsement on the same day and forwarded the file to the Deputy Secretary. The Deputy Secretary endorsed it on the same day and thereafter the rejection reply was issued on 29.3.2007, which was received by detenu on 2.4.2007."

6. Mr.Maqsood Khan, the learned Counsel for the detenu has pointed out that it took almost a month’s time for the Detaining Authority to obtain the parawise comments from the Sponsoring Authority. Therefore first limb of delay was 30 days i.e.from 8.2.2007 when the representation was received by the Detaining Authority till 8.3.2007 when the Sponsoring Authority had forwarded the parawise comments to the Detaining Authority. Even after receiving the said letter dated 8.3.2007 from the Sponsoring Authority, Mr.Maqsood Khan has pointed out that the Detaining Authority took a period of 21 days as it was rejected by the Detaining Authority only on 29.3.2007. Thus, a further period of 21 days was taken by the Detaining Authority. The contention of Mr.Maqsood Khan, the learned Counsel for the detenu is that by this belated consideration of the representation, the detenu’s detention becomes vitiated and he ought to be released forthwith, and as per the provisions of Article 22(5) of the Constitution of

India, the representation will have to be considered expeditiously and this is one of the vital right of the detenu under the preventive detention law.

7. In support of his contention, Mr.Maqsood Khan, the learned Cousnel for the detenu referred to and relied upon the judgment of the Hon'ble Supreme Court in the case of **Vijay Kumar V/s.State of Jammu & Kashmir & Others - AIR 1982 SC 1023.** In the said case, the detenu made a representation on 29.7.1981 which was received by the Detaining Authority on 12.08.1981. Though the representation was sent on 29.07.1981 itself through the post, and even the wireless message was sent in that behalf from the Jail, and finally it appears that the representation reached to the concerned Department of the Detaining Authority on 12.08.1981. The said representation was considered by the Detaining Authority and finally the same was rejected by the Chief Minister (Home) by his order dated 31st August, 1981. The Supreme Court in the above case pointed out that with regard to the first part of time lag i.e.from 29.7.1981 till 12.8.1981 the time spent was 14 days, and for the second limb of time lag when the same was decided on 31.8.1981, there was a time lag of 19 days. The said delay was construed by the Supreme Court to be inordinate and not explained on any convincing ground. In paragraph No.13 of the aforesaid judgment in the case of **Vijay Kumar,** the Supreme Court has referred to the

judgment in the case of **Khudi Ram Das V/s.State of West Bengal (1975) 2 SCC 81.** The said paragraph 13 reads as under:-

> "13. In Khudi Ram Das V/s.State of West Bengal (1975) 2 SCC 81: (AIR 1975 SC 550), this Court held that one of the basic requirements of Cl.(5) of Art.22 is that the authority making the order of detention must afford the detenu the earliest opportunity of making a representation against the order of detention and this requirement would become illusory unless there is a corresponding obligation on the detaining authority to consider the representation of the detenu as early as possible. Thus, in the facts of this case we are not satisfied that the representation was dealt with as early as possible or as expeditiously as possible, and, therefore, there would be contravention of Section 13 of the Act which would result in the invalidation of the order."

8. Mr.Maqsood Khan, the learned Counsel for detenu has therefore contended that in the instant case with regard to the first limb there is delay of one month and with regard to the second limb there is a delay of 21 days, whereas in the above referred Supreme Court case of **Vijaykumar** in the first limb there was delay of 14 days and in the second limb there was delay of 19 days. Hence, Mr.Maqsood Khan has sought immediate release of the detenu on the ground of not considering the detenu's representation expeditiously.

9. Mr.Mhaispurkar, the learned APP appearing on behalf of the Detaining Authority sought to justify the delay and contended that the explanation given in the said

paragraph No.3 of the affidavit of the Principal Secretary, (Appeals & Security) Home Department, Mantralaya, Mumbai dated 27.6.2007 which is quoted hereinabove, would be an adequate explanation.

10. After considering all the arguments and the judgment of the Supreme Court in the case of **Vijay Kumar** cited by the learned Counsel for the detenu, we find the explanation to be totally unsatisfactory. The Detaining Authority ought to have shown much better appreciation and attitude in dealing with such representations. It should be noted here that the distance between the office of Detaining Authority and that of Sponsoring Authority is hardly one kilometer. In any event in view of advanced communication facilities, which are admittedly in existence in both the aforesaid offices viz.that of the Detaining Authority and the Sponsoring Authority at Mumbai, like fax, internet, telephone etc., such a delay on the part of the Detaining Authority is totally unwarranted. What was sought to be contended and justified was that though the representation was received by the office of Detaining Authority on 8.2.2007 the same was forwarded to the Sponsoring Authority on 9.2.2007, and thereafter on 23.2.2007 & 6.3.2007 reminders were issued to the Sponsoring Authority for parawise comments. Such a contention cannot be accepted at all. With all modern communication facilities available, the above delay

cannot be justified.

11. It is really amazing that though all the modern communication facilities are available in both the offices viz. that of Detaining Authority & the Sponsoring Authority, still one month's time was taken just to forward the letter from Detaining Authority to the Sponsoring Authority and to receive the parawise comments, and even after realising that there has been a gross delay of one month, the Detaining Authority ought to have been immediately decided the representation when they received the parawise comments on 8.3.2007. Even thereafter a total lakadaisical approach has been adopted by the Detaining Authority and the representation came to be decided only on 29.3.2007 and the communication of rejection was received by the detenu on 2.4.2007. Though the Detaining Authority had received the parawise comments from the Sponsoring Authority on 8.3.2007, still it took 21 days to decide the representation, and the explanation for delay tendered in the aforesaid reply is totally unconvincing and not satisfactory.

12. Under the aforesaid facts and circumstances of the case, applying the ratio as laid down by the Supreme Court in the case of **Vijay Kumar,** we are inclined to hold in this case that the representation was not at all decided by the Detaining Authority expeditiously and

that there are no cogent and convincing reasons justifying the delay. In the circumstances, we pass the following order:-

> "The detenue be released forthwith, if he is not required in any other case. However it is made clear that the impugned order of Detention bearing No.PSA-1204/28/SPL-3(A) dated 21st April, 2005 is not set aside. The Writ Petition stands disposed of in terms of the above."

(SMT.R.S.DALVI, J.) **(DR.S.RADHAKRISHNAN, J.)**